IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

WP(C).No. 12390 of 2005(Y)

CMA.40/2003 of SUB COURT, THIRUVALLA
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PETITIONER:

SHEEBA ALIAS, W/O.T.O.ALIAS,
THOTTATHIL HOUSE, MUTHOOR P.O., THIRUVALLA.

BY ADV. SRI.ANTONY DOMINIC
SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH

RESPONDENTS:
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1. M/S.T.O.ABRAHAM & CO ST. MARYS TOWERS
MUTHOOR P.O, THIRUVALLA , REGD PARTNERSHIP FIRM,
HAVING REG. NO. 839/92 REP BY ITS MANAGING PARTNER
RESIDINT AT MALIYECKAL HOUSE, THURUTHICADU P.O.,
MALLAPPALLY, PATHANAMTHITTA DISTRIC.T

2. T.O ABRAHAM, S/O. LATE KURUVILA UNNITHAN
AGED 51 YEARS, MANAGING PARTNER, M/S.T.O,ABRAHAM
& CO, RESIDING AT MALIYECKAL BOUSE, THURUTHICADU
P.O., MALLAPPALLY, PATHANAMTHITTA DISTRTICT.

3. MARIAMMA SCHARIA, W/O. LATE T.S.SCHARIAH
URUMBIKUNNEL, THURUTHICADU, MALAPPALLY TALUK.

4. BINU ZACHARIAH, SON OF LATE T.S.SCARIAH,
URUMBIKUNNEL, THURUTHICADU, MALLAPPALLY TALUK.

5. T.O.ALIAS, S/.O.LATE UNNITHAN,
THOTTATHIL HOUSE,MUTHOOR P.O, TIRUVALLA.

6. THANKAMMA BABY, MARY SADANAM,
THURUTHICADU P.O., THIRUVALLA.

7. GIGY KURIAKOSE, S/O.LATE T.O.KURIAKOSE,
AGED 36 YEARS, RESIDINT AT URUMBIKUNNEL HOUSE,
THURUTHIKKAD P.O., THIRUVALLA.

8. ABRAHAM BABY, S/O. LATE T.O.BABY,
MARY SADANAM, THURUTHIKKAD P.O,THIRUVALLA.

9. BINOJ BABY, LATE T.O.BABY,
MARY SADANAM, THURUTHIKKAD P.O, THIRUVALLA.

10. STEPHEN BABY, S/O. LATE T.O.BABY,
MARY SADANAM, THURUTHIKKAD P.O., THIRUVALLA.

11. STATE BANK OF TRAVANCORE KODIMATHA
BRANCH, KOTTAYAM REPRESENTED BY ITS BRANCH
MANAGER.

BY ADV. SRI.K.P.DANDAPANI
SRI.P.HARIDAS
SRI.M.PATHROSE MATTHAI (SR.)
SRI.RONY J.PALLATH
SRI.V.AJAKUMAR
SRI.T.M.CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of the affidavit and petition filed by the petitioner herein in I.A.No.2479/03 in O.S.No.383/03 dated 25.08.2003.

Ext.P2:- True copy of the order dated 18.11.03 in I.A.No.2479/2003 in O.S.No.383 of 2003.

Ext.P3:- True copy of the common judgment dated 23.03.2005 in CMA Nos.40 and 41 of 2003.

Ext.P4:- True copy of the notice dated 7th October 2004 dissolving the partnership with effect from 11.10.2004.

Respondents Exhibits:-

Ext.R1:- True copy of the order dt.18.11.03 in I.A.2089/03 in O.S.3833/03 on the file of the Munsiff's Court, Thiruvalla.

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.12390 OF 2005

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Dated this the 9th day of January 2007

JUDGMENT

Petitioner is one of the partners of the first respondent partnership firm. O.S.383/03 was filed by respondents 1 to 4 for a permanent prohibitory injunction restraining defendants from obstructing second plaintiff from acting as Managing Partner of the firm and from representing the firm before any authority and from exercising any other powers conferred on the Managing Partner. Along with the suit, I.A.2089/03 was filed seeking an order of temporary injunction. As per Ext.P2 order, learned Munsiff allowed the application and restrained plaintiff from spending any money of the firm or from removing or dispossessing any vehicles as well as machineries of the firm from the yard or site without majority decision of the partners of the reconstituted firm. Ext.P2 order was challenged before Sub Court, Thiruvalla in CMA

40 and 41 of 2003. Under Ext.P3 order CMA 40/03 which was filed challenging the order in I.A.2479/03 was allowed and the order of injunction was vacated. CMA 41/03 was dismissed. This petition is filed challenging the order in CMA 40/03 vacating Ext.P2 order.

2. When the petition was admitted as per order dated 8.4.05 an interim stay was granted making it clear that it will be open to respondents to move before the vacation court to modify or vary that order. Subsequently as per order dated 26.5.05 this court permitted second respondent/second plaintiff to utilise Rs.10 lakhs from the available amount with a direction to maintain the accounts by engineer, K.M. Mathew, working in first respondent firm along with the second respondent, making it clear that in the event of requirement for additional amount second plaintiff has to approach this court. Alleging that second plaintiff without authorisation had withdrawn Rs.10 lakhs petitioner filed I.A.10455/05 for a direction to second

petitioner to deposit that amount in court. Second respondent filed a detailed objection.

3. Learned counsel appearing for the petitioner and respondents were heard.

3. Learned senior counsel Sri.Dandapani submitted that plaintiffs will withdraw the suit pending before learned Munsiff and a memo will be filed before learned Munsiff within two weeks from today and in such circumstance, the petition may be disposed of. Learned counsel appearing for petitioner submitted that as second respondent had withdrawn Rs.10 lakhs over and above the amount permitted by this court as per order dated 26.5.05, and it was without any authorisation second plaintiff is to be directed to deposit that amount. On hearing the learned counsel appearing for both sides, I do not find that, that question is to be considered in this petition filed under Article 227 of the Constitution of India. It is admitted that for dissolution of first respondent firm, a suit has already been instituted and is pending before

Sub Court, Thiruvalla as O.S.119/04. All these matters are to be considered by that court. Petitioner is at liberty to move an application, if advised, before that court, on the claim raised in I.A. 10455/05.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006